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PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collections for OMB Review; Comment Request; Reportable Events; Notice of Failure to Make Required Contributions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval of modifications to currently-approved information collections.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act, collections of information under PBGC's regulation on Reportable Events and Certain Other Notification Requirements with modifications. This notice informs the public of PBGC's request and solicits public comment on the collections.

DATES: Comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function.

A copy of the request will be posted on PBGC's web site at <https://www.pbgc.gov/prac/laws-and-regulation/federal-register-notices-open-for-comment>. It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street, NW, Washington, DC 20005-4026; faxing a request to 202-326-4042; or, calling 202-326-4040 during normal business hours (TTY users may call the Federal Relay Service toll-free at 800-877-8339 and ask to be connected to 202-326-4040). The Disclosure Division will e-mail, fax, or mail the information to you, as you request.

FOR FURTHER INFORMATION CONTACT: Stephanie Cibinic, Deputy Assistant General Counsel for Regulatory Affairs (cibinic.stephanie@pbgc.gov; 202-229-6352), Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC

20005-4026. TTY users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-229-6352.

SUPPLEMENTARY INFORMATION: Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) requires plan administrators and plan sponsors to report certain plan and employer events to PBGC. The reporting requirements give PBGC notice of events that indicate plan or employer financial problems. PBGC uses the information provided in determining what, if any, action it needs to take. For example, PBGC might need to institute proceedings to terminate a plan (placing it in trusteeship) under section 4042 of ERISA to ensure the continued payment of benefits to plan participants and their beneficiaries or to prevent unreasonable increases in PBGC's losses.

The provisions of section 4043 of ERISA have been implemented in PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043).

Form 10

Subparts B and C of the regulation deal with reportable events. PBGC has issued Forms 10 and 10-Advance and related instructions under subparts B and C (approved under OMB control number 1212-0013). PBGC is modifying the Form 10 for the "Failure to make required contributions" reportable event to provide that if payment was made to satisfy a missed contribution, the filer must submit documentation of that payment, e.g., a copy of the cancelled check or wire transfer, etc. Documentation is needed to give evidence that the missed contribution was made up and no risk to the plan remains before PBGC closes the event.

PBGC estimates that it will receive 573 reportable event notices per year under subparts B and C of the reportable events regulation using Forms 10 and 10-Advance and that the average annual burden of this collection of information is 1,800 hours and \$426,885.

Form 200

Section 303(k) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 430(k) of the Internal Revenue Code of 1986 (Code) impose a lien in favor of an

underfunded single-employer plan that is covered by PBGC's termination insurance program if (1) any person fails to make a required payment when due, and (2) the unpaid balance of that payment (including interest), when added to the aggregate unpaid balance of all preceding payments for which payment was not made when due (including interest), exceeds \$1 million. (For this purpose, a plan is underfunded if its funding target attainment percentage is less than 100 percent.) The lien is upon all property and rights to property belonging to the person or persons that are liable for required contributions (i.e., a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Only PBGC (or, at its direction, the plan's contributing sponsor or a member of the same controlled group) may perfect and enforce this lien. ERISA and the Code require persons that fail to make payments to notify PBGC within 10 days of the due date whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds \$1 million.

PBGC Form 200, Notice of Failure to Make Required Contributions, and related instructions implement the statutory notification requirement. Submission of Form 200 is required by 29 CFR 4043.81 (Subpart D of PBGC's regulation on Reportable Events and Other Notification Requirements, 29 CFR part 4043). PBGC currently requires filers to report the due date of the required payment that triggered the notification to PBGC and to calculate the cumulative amount of unpaid balances. PBGC is modifying the form to include a separate field showing the payment amount that triggered the notification in order to better track missed contributions and identify the amount by which liens associated with missed contributions must be updated.

PBGC estimates that it will receive 88 Form 200 filings per year and that the average annual burden of this collection of information is 88 hours and \$63,800.

Method of Filing

PBGC's reportable events and certain other notification requirements regulation (29 CFR

part 4043) provides that reportable event notices required under this part must be filed electronically in accordance with the instructions posted on PBGC's website. Those instructions currently provide two options for electronic filing:

- Using the 4043 module of PBGC's e-filing portal, or
- Emailing a completed form and any required attachments to post-event.report@pbgc.gov.

PBGC's e-filing portal, which has been available since 2016, offers a secure application for submitting Form 200 and Form 10 and 10-Advance information. The e-filing portal allows filers to review filings and generate a list of omissions and inconsistencies prior to submission to ensure completeness; save a partially completed filing; modify information any time prior to submission; pre-populate a filing with data from a previously submitted filing; route the filing as needed to facilitate e-certifications; and review prior filings submitted via the e-filing portal. PBGC is eliminating the email option for filings due after September 30, 2021. In other words, starting in October 2021, these filings would be submitted via PBGC's e-filing portal.

PBGC also is making other editorial changes to the forms and instructions in these collections.

OMB approval of the information collection under control number 1212-0013 expires March 31, 2023, and of the information collection under control number 1212-0041 expires February 28, 2022. On November 5, 2019, PBGC published in the Federal Register (at 84 FR 59660) a notice informing the public of its intent to request approval of modifications to these currently-approved information collections. No comments were received. PBGC is requesting that OMB extend its approval of these information collections for three years, with modifications. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Issued in Washington DC by

Stephanie Cibinic,
Deputy Assistant General Counsel for Regulatory Affairs,
Pension Benefit Guaranty Corporation.

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